IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

WP(C).No. 24973 of 2006(W)

PETITIONER:

1. **M.SASEENDRAN, HIGH SCHOOL ASSISTANT (URUDU), P.G.M.PANCHAYATH HIGH SCHOOL, CHERUVANCHERRY, KANNUR DISTRICT.**
2. **M.SHOBHANA, HIGH SCHOOL ASSISTANT (MALAYALAM), P.G.M.PANCHAYATH HIGH SCHOOL, CHERUVANCHERRY, KANNUR DISTRICT.**
3. **K.VIMALA, HIGH SCHOOL ASSISTANT (HINDI), P.G.M.PANCHAYATH HIGH SCHOOL, CHERUVANCHERRY, KANNUR DISTRICT.**

BY ADV. SRI.P.M.PAREETH
SMT.C.C.JANCY
SRI.MOHAMMED SHAMEEL

RESPONDENTS:

1. **STATE OF KERALA, REPRESENTED BY SECRETARY, GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**
2. **DISTRICT EDUCATIONAL OFFICER, THALASSERY.**
3. **HEADMASTER, P.G.M.PANCHAYATH HIGH SCHOOL, CHERUVANCHERRY, KANNUR DISTRICT.**

BY GOVERNMENT PLEADER SRI.T.T.MOHAMMED

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO. 24973/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ANNEXURE-III OF G.O.(P) NO.600/93/FIN DT.25.9.93.

EXT.P2(a):- COPY OF THE FIXATION STATEMENT DT.1.10.94.

EXT.P2(b):- COPY OF THE FIXATION STATEMENT DT.1.10.94.

EXT.P2(c):- COPY OF THE FIXATION STATEMENT DT.1.10.94.

EXT.P3:-COPY OF THE OBJECTION DT.22.11.02 RAISED BY THE 2ND RESPONTENT IN THE CASE OF OTHER TEACHERS IN THE SCHOOL.

EXT.P4:- COPY OF THE CIRCULAR NO.59151/12/2000/G.Edn. DT.17.5.02 ISSUED BY THE 1ST RESPONDENT.

EXT.P5:- COPY OF THE JUDGMENT DT.7.8.06 IN WP(C) NO.20914/03 OF THIS HONOURABLE COURT.

EXT.P6(a):- COPY OF THE OPTION DT.1.5.04 SUBMITTED BY THE 1ST PETITIONER.

EXT.P6(b):- COPY OF THE OPTION DT.1.5.04 SUBMITTED BY THE 2ND PETITIONER.

EXT.P6(c):- COPY OF THE OPTION DT.11.10.03 SUBMITTED BY THE 3RD PETITIONER.

EXT.P7(a):- COPY OF THE CHALAN DT.8.8.06 TO SHOW REMITTANCE OF THE AMOUNT BY THE 1ST PETITIONER.

EXT.P7(b);- COPY OF THE CHALAN DT.8.8.06 TO SHOW REMITTANCE OF THE AMOUNT BY 2ND PETITIONER.

EXT.P7(c):- COPY OF THE CHALAN DT.8.8.06 TO SHOW REMITTANCE OF THE AMOUNT BY THE 3RD PETITIONER.

EXT.P8(a):- COPY OF THE COVERING LETTER AND STATEMENT OF FIXATION DT.18.8.06 IN RESPECT OF THE 1ST PETITIONER SUBMITTED BY THE 3RD RESPONDENT TO THE 2ND RESPONDENT.

EXT.P8(b):- COPY OF THE COVERING LETTER AND STATEMENT OF FIXATION DT.18.8.06 IN RESPECT OF THE 2ND PETITIONER SUBMITTED BY THE 3RD RESPONDENT TO THE 2ND RESPONDENT.

EXT.P8(c):- COPY OF THE COVERING LETTER AND STATEMENT OF FIXATION DT.18.8.06 IN RESPECT OF THE PETITIONER 3RD SUBMITTED BY THE 3RD RESPONDENT TO THE 2ND RESPONDENT.

EXT.P9(a):- COPY OF THE OBJECTION DT.30.8.06 ISSUED BY THE 2ND RESPONDENT TO THE 3RD RESPONDENT.

EXT.P9(b):- COPY OF THE OBJECTION DT. 30.8.06 ISSUED BY THE 2ND RESPONDENT TO THE 3RD RESPONDENT.

EXT.P9(c):- COPY OF THE OBJECTIONS DT.30.8.06 ISSUED BY THE 2ND RESPONDENT TO THE 3RD RESPONDENT.

K.M.JOSEPH, J.

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WP.(C) No.24973 OF 2006

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Dated this the 28th day of February, 2007

JUDGMENT

Case of the petitioners in brief is as follows:

Petitioners are working as High School Assistants. Their pay and allowances were stepped up as per Ext.P2 series of fixation statement dated 1.10.1994 on the basis of Ext.P1 rules of fixation. They were entitled to step up their pay on par with their junior Sri.Prakasanand. Similar fixations were objected by the second respondent. Petitioners fixations were not objected. When proposals were submitted for re-fixation of the pay of the petitioners granting senior grade on completion of 18 years service, the third respondent directed the petitioners to refund the alleged excess drawn by the petitioners in connection with the step up enjoyed by them. In order to avoid delay the petitioners remitted the amounts under protest. In Ext.P5 judgment this court held that Ext.P4 Circular cannot be the basis for any audit objection against step up granted. But the second respondent objected to the proposal for 18 years higher grade and directed recovery of alleged excess pay for the period from May 1997

to August 2006 as per Ext.P9 series. The claim of the petitioners is based on Ext.P5 judgment. They seek to quash Exts.P3, P4 and P9 series and to direct the respondents to refund to the petitioners the amounts of Rs.4238/-, 4238/- and 3964/- remitted by the petitioners. They further seek a direction to sanction 18 years senior grade in the scale of Rs.5500-9075 as on 1.5.2004 and to disburse the arrears of pay thereof for the period from 1.5,2004 onwards.

2. Heard Government Pleader also. The Government Pleader does not dispute that the question is covered in favour of the petitioners by Ext.P5 judgment. He also does not dispute the fact that the Circular on the basis of which recovery is made is in the year 2002 and that is sought to be made the basis of impugning the step up given in the year 1992. In such circumstances the writ petition is only to be allowed.

Accordingly, I allow the writ petition and quash Exts.P3, P4 and P9 series. There will be a direction to the second respondent to refund the amounts remitted by the petitioners as per Ext.P7 series, namely Rs.4238/-, Rs.4238/- and Rs.3964/- to petitioners 1 to 3 respectively. Regarding the third prayer, namely, to sanction 18 years senior grade

and to pay arrears, the second respondent will consider the same and take a decision in accordance with law within a period of one month from the date of receipt of a copy of this judgment.

(K.M. JOSEPH, JUDGE)

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K.M.JOSEPH, JJ.

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W.A. No. OF

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JUDGMENT

Dated this the day of February, 2006.